



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2005

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P. O. Box 4004  
Huntsville, TX 77342

OR2005-03735

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223084.

The Texas Department of Criminal Justice (the "department") received a request for information on a Use of Force incident. You claim that the requested information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.134 of the Government Code states that "[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department." Gov't Code § 552.134(a). Section 552.029 provides that, notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" These eight categories of information include "basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate." *Id.* § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

The submitted information concerns an incident involving the use of force against an inmate of the department and an alleged crime by an inmate of the department. Section 552.134 generally excepts from disclosure information about an inmate who is confined in a facility

operated by or under contract with the department. However, section 552.029 identifies categories of information, including basic information about an incident involving the use of force or an alleged crime involving an inmate, that must be disclosed. Basic information about the use of force and the alleged crime involving the inmate is subject to disclosure under section 552.029(8). The basic information that must generally be released under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The remaining information must be withheld under section 552.134 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth A. Stephens', written over a horizontal line.

Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#223084

Enc. Submitted documents

c: Ms. Mary Thomas  
609 W. Pentagon Parkway  
Dallas, TX 75224  
(w/o enclosures)